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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,339	11/28/2003	Pat R. Mitchell	465	9966
7590	02/09/2006			
Robert Charles Hill 235 Montgomery Street #821 San Francisco, CA 94104			EXAMINER FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/724,339

Applicant(s)

MITCHELL ET AL.

Examiner

Charles A. Fox

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9 and 11 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cam structure on the elevator plate matching the three lobed cam must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification is not enabling of the elevator plate and the cam as being mirror images, but rather complimentary structures. If they were mirror images the collars (214,216) would by necessity be the same diameter and therefore keep the device from functioning as a lift as the cam and associated followers would not meet. It is also clear from viewing figure 2 that the two elements in question are not mirror images.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Staar. Regarding claims 1,2 and 5 Schroeder US 5,338,955 teaches an automated warehouse row cart comprising:

- a rail car (70) for trucking loads within an automated warehouse;
- a top tray (71) disposed on said car for lifting and lowering said loads;
- a lifter for said top tray located within said car;

a motor and transmission assembly (170) for raising and lowering said lifter. Schroeder does not teach the lifting device as being cam operated. Staar US 4,238,055 teaches a lift device comprising:

- a lift plate (26);

- a set of cam lifters (28) disposed about a vertical axis of said plate;

- a multi lobe cam (11) disposed on the edge of a cylinder;

- said cylinder also aligned along said axis;

wherein said cam lifters ride along said cam to provide straight vertical lifting of the platform;

- a motor and transmission for turning said cam relative to said plate;

wherein the lobes of said cam are symmetrical to allow said motor to operate in a single direction for both lifting and lowering of said platform. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder with a lift device as taught by Staar in order to easily reciprocate the lifting platform with a one way motor thereby making the device less costly to produce while using a well known means for reciprocal lifting.

Regarding claim 6 Schroeder further teaches the row car as being able to dock with an aisle car.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder and Staar as applied to claim 1 above, and further in view of Weeper. Schroeder and Staar teach the limitations of claim 1 as above, they do not teach a three lobed cam. Weeper US 4,289,466 teaches a cam (29) with surfaces (30) forming lobes

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upon said cam, wherein said surfaces may form 3 lobes if desired by the designer of the device. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder and Staar with a three lobed cam as taught by Weeper in order to allow the device to more stable when the lifting plate is supporting a load.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder and Staar as applied to claim 1 above, and further in view of Bernardi. Schroeder and Staar teach the limitations of claim 1 as above, they do not teach dwell point on the cam. Bernardi US 6,176,258 teaches a cam(100) with flat point (98) for allowing the cam to be easily positioned at a predetermined stopping point. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder and Staar with dwell point as taught by Bernardi in order to stop the lift device at predetermined locations in an easily controllable manner.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,652,213 in view of Staar. Us Patent No. 6,652,213 to Mitchell et al. discloses the row cart and aisle cart means as claimed in the instant invention with a generic lifting device disclosed in the row cart. Starr teaches a reciprocating cam lifting device as outlined above. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the row cart taught by Mitchell et al. with a lifting device as taught by Staar in order to easily reciprocate the lifting platform with a one way motor thereby making the device less costly to produce while using a well known means for reciprocal lifting.

#### ***Response to Amendment***

The amendments to the claims, specification and drawings filed on November 23, 2005 have been entered into the record.

#### ***Allowable Subject Matter***

Claims 7-9 and 11 are allowed. The closest prior art of Staar does not teach or suggest a cam member with the structural limitations as found in claim 7. Claims 8,9 and 11 are allowed based on their dependency on claim 7.

#### ***Response to Arguments***

Applicant's arguments filed November 23, 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction

based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case the Schroeder reference teaches a general electro-mechanical lift for their device, and the Staar reference teaches an electro-mechanical lift. As both references have electro-mechanical lift devices they do overlap in regards to those devices. The weight of the load to be lifted is not material as scaling up or down of a structure will still lead to an equivalent structure. Therefore the art is analogous and the motivation to combine comes from the Schroeder reference which teaches using any electro-mechanical lift as well as a hydraulic lift as an equivalent.

Regarding the use of the Weeper and Bernardi references the applicant only argues that they are unrelated, but they both teach using cams similar to those found in the Staar reference and are therefore related. The claims stand finally rejected as before.

Regarding the double patenting rejection of claims 5 and 6 it is noted that claim 11 of the Mitchell reference has the structure needed to meet claim 5 and 6 save the cam lifting device. As such the double patenting rejections are upheld.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).




A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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